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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/641,793	08/18/2000	Noel E. Zeller	7485/62690	7285

7590 11/06/2002

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EXAMINER

GOODWIN, JEANNE M

ART UNIT	PAPER NUMBER
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2841

DATE MAILED: 11/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/641,793

Applicant(s)

ZELLER, NOEL E.

Examiner

Jeanne-Marguerite Goodwin

Art Unit

2841

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 August 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7-10 and 13-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-10 and 13-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 7-10, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,883,860 to McKay in view of US Patent to Tortola et al. [hereinafter Tortola].

McKay discloses a timekeeping and magnifying device comprising a housing with a clock face (114), a magnifying lens (116) that overlies the face, wherein the lens appears to pivot rotationally in a plane substantially parallel to the face and a light (142) adjacent the lens.

McKay discloses all the subject matter claimed by applicant with the exception of the limitation stated in claim 13, i.e., a cover that covers the lens and face; the limitation stated in claim 7, i.e., the lens can pivot substantially 360 degrees relative to the face and cover; the limitation stated in claims 8 and 9, i.e., the cover and shaft can pivot substantially 180 degrees relative to the face; and the limitation stated in claim 10, i.e., the moving means comprises a helical cam concentric with the shaft.

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With respect to the limitation stated in claim 13, i.e., a cover that covers the lens and face: Tortola discloses a combined light and magnifier apparatus (10) having a display face (24), a base (14) including a cover (20) pivotably secured to the base having a magnifying lens (28) stored within the cover, wherein the cover and shaft can pivot relative to the face and comprising moving means constructed so that, when the cover and shaft pivot from a condition wherein the cover covers the face to condition wherein the cover uncovers the face, a side opening (22) to permit the user to observe an on/off light on the face, an on/off electrical switch (26) to operate a light means, wherein the light means may be used independently of the magnifying apparatus, that is, the cover may be pivotably opened into its extended position and the magnifying lens retained in the stored position within the outwardly extended, while the face may merely be indirectly lighted by the light means. Likewise, the magnifying lens may be placed in a magnifying, use position and the light means not employed by the non-activation of the on/off switch. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add the cover and light assembly, as taught by Tortola, to the housing, as taught by McKay, in order to provide protection for the lighting means and the magnifying lens from any inadvertent damage.

With respect to the limitation stated in claim 7, i.e., the lens can pivot substantially 360 degrees relative to the face and cover: the limitations in this claim, absent any criticality, are only considered to be the "optimum" value of the lens pivot with respect to the face and cover disclosed by McKay and Tortola, as stated above, that a person having ordinary skill in the art would have been able to determine using routine experimentation based, among other things, on the desired accuracy, manufacturing costs, etc. See In re Boesch, 205 USPQ 215 (CCPA 1980).

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With respect to the limitation stated in claim 8 and 9, i.e., the cover and shaft can pivot substantially 180 degrees relative to the face: the limitations in this claim, absent any criticality, are only considered to be the “optimum” value of the cover and shaft assemblies pivot with respect to the face disclosed by McKay and Tortola, as stated above, that a person having ordinary skill in the art would have been able to determine using routine experimentation based, among other things, on the desired accuracy, manufacturing costs, etc. See In re Boesch, 205 USPQ 215 (CCPA 1980).

With respect to the limitation stated in claim 10, i.e., the moving means comprises a helical cam concentric with the shaft: this limitation, absent any criticality, is only considered a choice of engineering skill, choice or design because 1) neither non-obvious nor unexpected results will be obtained if the cover and moving means assembly is used to pivot the cover from the housing, as already illustrated by McKay and Tortola, 2) the cover and moving means assembly, as claimed by applicant and cover and moving means assembly used by McKay and Tortola are well known alternate types of cover assemblies which will perform the same function, if one is replaced with the other, of moving the cover sufficiently away from the housing, and the 3) the use of the cover and moving means assembly is considered to be nothing more than the use of one of numerous and well known alternate types of cover and moving means assemblies used to move a cover sufficiently from the housing that a person having ordinary skill in the art would have been able to provide using routine experimentation in order to sufficiently move the cover from the housing.

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4. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of McKay and Tortola as applied to claims 7-10, 13 and 14 above, and further in view of US Patent 3,3937,320 to Chao et al. [hereinafter Chao].

The combination of McKay and Tortola disclose a device as stated above with regards to claims 7-10, 13 and 14. The combination of McKay and Tortola disclose all the subject matter claimed by applicant with the exception of the limitations stated in claim 15, i.e., a first pair of contacts fixed relative to the cover and a second pair of contacts fixed relative to the lens.

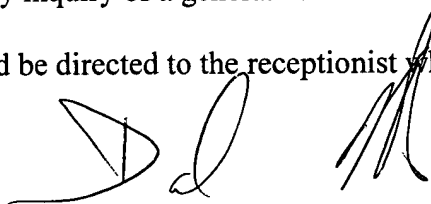
With respect to the limitations stated in claim 15: Chao discloses a lighted device comprising a switch consisting of electrically conductive U-shaped metal clips (24) and (25) that clip to mating edges (26) and (27) of the case and cover respectively. Each of these edges includes a recessed notch (28) and (29) respectively in which the clips fit in order that they are sufficiently spaced apart, when the box is closed so that they do not make electrical contact with each other. In operative use, however, when the cover is pivoted upward the clip is pivoted from the position shown in Fig. 3 to the position shown in Fig. 4, thus closing the electric circuit automatically and lighting the lamp which upon the box. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the cover and light assembly, as taught by the combination of McKay and Tortola, with the cover and light assembly, as taught by Chao, since both are alternative types of cover and light assemblies which provide protection for the lighting means and the contents of the box from any inadvertent damage.

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*Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 disclose related devices. US Patent 6,347,796 to Grossman et al. and US Patent 5,119,239 to Iaquinto et al. disclose a cover and magnifier device.

6. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Examiner Jeanne-Marguerite Goodwin whose telephone number is (703) 305-0264. The examiner can normally be reached on Monday-Friday (9am-6pm), alternate Fridays off. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7724. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



JMG  
October 31, 2002

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